

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY CARTER,

Defendant-Appellant.

UNPUBLISHED

April 3, 2003

No. 235590

Kent Circuit Court

LC No. 01-000091-FC

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in allowing a police witness to testify about tape recorded statements made by him while in custody during phone conversations with various individuals. Although defendant raised a number of issues with respect to the admission of the officer’s testimony, defendant’s analysis on appeal focuses solely on the argument that the audiotapes were not properly authenticated under MRE 901.¹ However, the authentication rule concerns material evidence that is actually admitted at trial. See *People v Berkey*, 437 Mich 40, 45, 47; 467 NW2d 6 (1991). Our review of the record reveals that the audiotapes were never actually admitted at trial – only testimony *about* the tapes’ contents was admitted. Thus, defendant’s argument fails as a matter of law.

Defendant next argues that he was denied the effective assistance of counsel because trial counsel failed to properly investigate a possible alibi defense, namely that defendant was present in a treatment program in Illinois at the time of the instant offense. Defendant first informed counsel of this issue on the evening of the first day of trial. Notwithstanding this late revelation, the record indicates that defense counsel contacted the treatment program and was informed that

¹ Although defendant also raises a related issue in his statement of questions presented that the admission of the officer’s testimony violated the best evidence rule, MRE 1002; MRE 1004, the discussion section of his appellate brief does not contain an analysis of this issue. Defendant’s failure to discuss this claim in detail constitutes abandonment of this issue. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

they had no record of defendant's enrollment. An attempt to contact defendant's parole officer proved fruitless. Moreover, defendant has failed show that he was enrolled in the program. He has therefore failed to show that counsel acted unreasonably under the circumstances and has thus failed to provide support for his claim of ineffective assistance. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Defendant lastly argues that the trial court erred in refusing to grant defense counsel's motion to withdraw because defendant was unhappy with counsel's representation. A review of the record reveals that counsel did not, in fact, move to withdraw but instead indicated that she would not oppose the trial court's decision to offer defendant substitute counsel. Defendant's alleged dissatisfaction with counsel and the fact that he filed an unsuccessful grievance against her is insufficient to render the trial court's decision not to appoint substitute counsel an abuse of discretion. See *People v Hernandez*, 84 Mich App 1, 9; 269 NW2d 322 (1978).

Affirmed.

/s/ Peter D. O'Connell

/s/ E. Thomas Fitzgerald

/s/ Christopher M. Murray